Certified Translation
by Thomas H. Kavelin

[A set of initials appears at the bottom left margin of every page of the Spanish source text but the last, which is signed./Tr.]

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SAN JUAN SUPERIOR COURT

PARTIDO ACCION CIVIL (CIVIL ACTION PARTY),	*	
PLAINTIFF	*	CIVIL NO. K.E. 98-0866
VS.	*	(907)
COMMONWEALTH OF PUERTO RICO; STATE ELECTORAL COMMISSION; JUAN R. MELECIO, PRESIDENT OF THE STATE ELECTORAL COMMISSION; ELECTORAL COMMISSIONER OF THE NEW PROGRESSIVE PARTY; ELECTORAL COMMISSIONER OF THE POPULAR PARTY [sic] AND ELECTORAL COMMISSIONER OF THE PUERTO RICAN PRO-INDEPENDENCE PARTY	*	DECLARATORY JUDGMENT AND PERMANENT INJUNCTION
DEFENDANTS	*	

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SUMMARY JUDGMENT

On October 6, 1998, the Civil Action Party (hereinafter, "CAP"), a political group interested in becoming a party by petition, filed the above-captioned complaint. It prayed the Court to enter a declaratory judgment, pursuant to the provisions of Rule 59 of the Rules of Civil Procedure, declaring the unconstitutionality of the requirements contained in the Electoral Act, which stipulated that petitions to register a political party in Puerto Rico must be sworn to before a notary and filed with the State Electoral Commission within the term of seven days from fulfillment [of the notarization requirements]. Articles 3.001 and 3.002 of the Puerto Rico Electoral Act, 16 L.P.R.A. 3101 and 3102.

The plaintiff organization further prayed us to issue both preliminary and permanent orders of injunction against defendants for them to cease from demanding that plaintiff comply with said requirements. Finally, they prayed that we order defendants to adopt the necessary legal measures so that the registration process established by Law for the presentation of candidacies for primaries of registered parties be the one required of the CAP to comply with the necessary requirements for its registration.

Defendants made appearances through separate motions praying for dismissal of the complaint.[1] They

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[1] The Electoral Commissioner of the New Progressive Party made an appearance on October 19, 1998, through a document entitled "Motion to Dismiss". For its part, on October 20, 1998, the Commonwealth of Puerto Rico filed a "Motion in Compliance with Order and Motion to Dismiss". Finally, on that

alleged, in sum, that plaintiff had no standing to bring the above-captioned suit, inasmuch as it is not a political party; that the State Electoral Commission had exclusive jurisdiction on the matter in controversy, for which reason the Court lacked jurisdiction to hear the same; that the judicial scrutiny applicable to the case was rational connection-based analysis and not the strict scrutiny as alleged by plaintiff; that registering a political party was not a fundamental right and that no violation of the constitutional equal protection clause for political ideology had occurred, since all **similarly situated** groups had to satisfy identical requirements as those demanded of plaintiff to enable them to register as parties by petition. Furthermore, they averred that the contested requirements were reasonable and that they were in response to an important interest of the State, which has broad power to regulate electoral processes. Plaintiff timely posed its opposition to the motions for dismissal.

On November 10, 1998, after several procedural steps,[2] plaintiff filed a document entitled "Motion in Compliance with Order, Prayer for Summary Judgment and permanent Injunction", in which it reiterated the

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same date, the State Electoral Commission and its President filed a "Motion in Compliance with Order and Prayer for Dismissal".

[2] On October 26, 1998, plaintiff presented a document "Brief Reply and Motion for Extension", in response to codefendants' motions for dismissal. For its part, on October 29, 1998, codefendant Electoral Commission of the New Progressive Party filed a "Motion Accompanying Exhibit and Reply to Opposition to Motion for Dismissal".

arguments outlined in the complaint and in its Opposition to the Motions for Dismissal, and prayed that the Court enter judgment in its favor, in the same terms set forth in the complaint. Codefendants each filed motions in opposition to entry of summary judgment.[3]

With the benefit of the parties; appearances,[4] we are in a position to rule. On the basis of the documents and the admissions of the parties, we conclude that in the above-captioned case there is no real substantial controversy as to the following.

MATERIAL FACTS

1. Plaintiff, Civil Action Party (CAP), is a group of citizens wishing to register as a party by petition in order to participate in the elections to be held in Puerto Rico in the year 2000.

2. The State Electoral Commission (hereinafter, "the Commission") is the administrative agency which is in

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[3] The Commission filed its "Brief Reply and Opposition to Summary Judgment" on November 25, 1998. For its part, the Electoral Commission of the N.P.P. filed its "Motion in Compliance of Order and Opposition to Summary Judgment" on December 2, 1998. Finally, the Commonwealth of Puerto Rico filed a "Motion in Compliance with Order, In Reply to the Prayer for Summary Judgment and in Opposition to Permanent Injunction" on December 4, 1998.

[4] It is necessary to point out that on December 17, 1998, plaintiff filed a document entitled "Motion for Preliminary Injunction", in which it reiterated its original prayer for a Preliminary Injunction. For its part, codefendant Commonwealth of Puerto Rico filed an Opposition to that motion on December 28, 1998.

charge of electoral matters in Puerto Rico. Its President, the Hon. Juan R. Melecio, is the official in charge of administering the Commission. Codefendants Electoral Commissioners of the New Progressive, Popular Democratic and Pro-Independence Parties hereinafter, "N.P.P., P.D.P. and P.I.P.", respectively) are the officials in charge of making decisions concerning electoral matters, pursuant to the authority vested in them by the Electoral Act. Also appearing as a codefendant in the lawsuit is the Commonwealth of Puerto Rico, by virtue of the obligation of the Secretary of Justice to defend the constitutionality of the laws of the land.

3. The Electoral Act defines "party by petition" as: " . . . any group of citizens that, for the purpose of appearing on the electoral ballot of general elections, on or before the June primary for the election year, registers as a political party, by filing with the Commission **sworn petitions to that effect, before notaries public admitted to notarial practice**, pursuant to the provisions of the current Notarial Act. . . . signed by a number of electors no less than **five (5) percent** of the total of votes cast for all the candidates in the office of Governor, in the preceding general elections. Art. 3.001 of the Electoral Act, 16 L.P.R.A. 3101 (3). (Emphasis ours). In accordance with the afore cited legal provision, in order to be registered as a party by petition, the CAP needs to obtain 98,685 sworn petitions.

4. Pursuant to the provision of the Act, duly sworn petitions for registration must be filed with the Commission, accompanied by their respective complementary reports, "no later than seven (7) days from taking the

oath in question". Art. 3.002 of the Electoral Act, 16 L.P.R.A. 3102.

5. On the date of filing of the above-captioned complaint, the CAP had two notaries public to swear in their registration petitions. Furthermore, it had identified more than twenty volunteers – who are not notaries public – willing to work to get the necessary endorsements for the party's registration.

6. In the term between October 1, 1998 and May 31, 2000, there are 609 days. This means that in order to be duly registered, the CAP would have to work to get an average of 162 endorsements a day, or 1,134 petitions a week.

7. Since in its view the requirements established by the Electoral Act for a party to register are onerous, the CAP filed the above-captioned complaint.

Based on the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Current case law in our country has fashioned a series of requirements with which a plaintiff should comply in order for its standing to be recognized to bring suit; to wit: (1) that it has suffered a clear and palpable damage; (2) that the damage be real, immediate and precise and not an abstract or hypothetical one; (3) that the cause of action arise under the canopy of the Constitution or a law; and (4) that there be a connection between the damage suffered and the cause of action brought. *Popular Democratic Party v. Rossello,* J.T.S. 165;

Noriega v. Hernandez Colon, 94 J.T.S. 35; *Hernandez Torres v. Hernandez Colon*, 92 J.T.S. 123; *Hernandez Torres v. Hernandez Colon*, 92 J.T.S. 16; *Fundación Arqueologica v. Departmento de la Vivienda*, 109 D.P.R. 387, 392 (1980).

When plaintiff is an association, there are certain additional criteria that have to be filled. These are: (1) that the members have standing to sue in their own name; (2) that the interests which they are seeking to protect be related to the organization's objectives; and (3) that the claim and remedy prayed for not require the individual participation of the members in the lawsuit. *Partido Popular Democratico v. Rossello*, 95 J.T.S. 165; *Col. Opticos De P.R. v. Vani Visual Center*, 124 D.P.R. 559 (1889).

2. On the other hand, the Electoral Act defines "person" as " . . . any natural or artificial person, regardless of how it has been constituted, such as any association, organization, partnership, entity or group of persons acting independently or collectively". 16 L.P.R.A. 3003 (44).

3. Based on the aforesaid criteria, we must needs conclude that plaintiff has standing to bring the above-captioned lawsuit. On the one hand, plaintiff is alleging a damage that certainly affects it personally; to wit: the alleged difficulty in registering as a party by petition. This is a clear and palpable damage, not a hypothetical one, arising under the canopy of a law of the Constitution. Furthermore, the damages alleged by plaintiff are intimately related to its purpose as an organization; to wit: its interest in being registered as a party by petition, in order to qualify for the benefits said classification brings with it. In addition, the Electoral Action includes groups such as the CAP in the definition of "person". 16

L.P.R.A. 3003 (44). On the other hand, pursuant to Section 3003 (44) of the Electoral Act, the members of the CAP would have standing individually, wherefore their individual participation in the suit is not required, since the CAP can defend the common interest of its members.

4. So, having established plaintiff's standing, we must determine if the Court has jurisdiction to hear the above-captioned case. We shall see.

The doctrine of primary jurisdiction is applicable to determine to which forum – judicial or administrative – the initial authority to adjudicate and hear a matter belongs. *Gracia v. Policia*, 96 J.T.S. 32. *Id.*; *Rivera Ortiz v. Municipio*, 96 J.T.S. 101; *Ferrer Rodriguez v. Figueroa*, 109 D.P.R. 398, 402 (1980).

5. The aforesaid doctrine has two sides: exclusive primary jurisdiction and concurrent primary jurisdiction. With respect to the effects of each of the two elements, the Supreme Court has stated that:

> " . . . In the first, **the law provides that the organism shall be the only one which shall have initial jurisdiction** to examine the claim . . . [Cites omitted] . . . The courts are relieved of any original jurisdiction which they would otherwise have and their function in the cases concerned is limited to judicial review.
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> Concurrent jurisdiction occurs when the law allows the claim to begin in either the administrative or judicial forum. That is to say, when a claim can be heard in the judicial forum but under a regulatory plan has been referred to a specialized administrative body, the judicial

> process is suspended out of deference to the agency . . . [Cites omitted]".

Colon v. Mendez, 92 J.T.S. 51. (Emphasis ours); *Rivera Ortiz v. Municipio, supra.*

The Supreme Court has reiterated that it is not necessary for the legislature to include the express language of "exclusive jurisdiction", while the statute clearly shows the fact that it is only the agency that can hear the case at the trial stage. *Id.; Ferreteria Matos, Inc. v. P.R. Tel. Co.*, 111 D.P.R. 153, 157 (1980). Furthermore, said High Court ruled that in cases in which the doctrine of primary jurisdiction applies, the rule of exhausting administrative remedies, and its exceptions, does not apply. Rivera Ortiz v. Municipio, supra.

6. On the other hand, even though the constitution's contesting of administrative actions is subject to the rule of exhausting administrative remedies, " . . . agencies cannot decide on the constitutionality of the law which creates them . . . " *Vélez Ramirez v. Romero Barceló*, 112 D.P.R. 716, 728 (1982).

7. In addition, the doctrine of primary jurisdiction presupposes the exercise of discretion or expertise by the administrative agency which will hear the controversy. *Adorno Quiles v. Hernández*, 126 D.P.R. 191, 194 (1990); *Febres v. Feigeé*, 106 D.P.R. 676, 682 (1978). To these effects, the Supreme Court opined that: " . . . in evaluating cases it is necessary to distinguish between issues of legal construction, in which the courts are specialists, and issues suitable to administrative discretion or expertise . . . [Cites ommitted]". *Adorno Quiles v. Hernández, supra*, at p. 195. (Emphasis ours).

8. From the foregoing it can be drawn that the allegation contained in the Motion for Dismissal filed by the Commissioner of the N.P.R., in the sense that the Court lacks jurisdiction to adjudicate the above-captioned lawsuit, cannot prevail. In the first place, in the Electoral Act there is no clear language to the effect that the State Electoral Commission has exclusive jurisdiction over electoral issues. Observe that the Electoral Act only grants the Commission " . . . original jurisdiction to hear, deliberate and rule, *motu proprio* or at the instance of an interested party, on any matter or controversy of an electoral nature". 16 L.P.R.A. 3015. This languages denotes, at best, the existence of concurrent jurisdiction between the Commission and the Court.

9. In the second place, the controversy before the Court is strictly one of law; to wit: the constitutionality of two provisions of the Electoral Act. In conclusion, this is not a case in which administrative discretion or expertise is required. What is required is a legal construction in light of the Constitution. This function belongs precisely to the Courts.]" *Adorno Quiles v. Hernández, supra.*

10. Based on the foregoing, it is clear that the Court has jurisdiction to hear, at the trial stage, the controversy set forth in the above-captioned case.

Having dealt with the jurisdictional aspects raised by defendants, it falls to us to examine the merits of plaintiff's contention.

11. For the constitutional analysis under the cause of equal protection under the laws of the Puerto Rican Constitution two types of scrutiny are used; to wit: minimum or rational connection-based scrutiny and strict

scrutiny. *Velez v. Srio. de Justicia,* 115 D.P.R. 533, 537 (1984).

12. In *Vélez v. Srio., Id.,* the Supreme Court describes traditional scrutiny as follows:[5]

> " . . . It provides that a legislative classification should not be declared void unless it is not arbitrary and no rational connection can be established between it and a legitimate interest of the State. Under this criterion it has been ruled that a law is constitutional as long as a situation of facts can reasonably be conceived to justify the classification, and the burden of proof shall belong to the one alleging the unconstitutionality of the legislation at issue . . . "

Id., at p. 538; *Zachry International v. Tribunal Superior,* 114 D.P.R. 267, 277 (1975); *Marina Ind. v. Brown Boveri Corp.,* 114 D.R.R. 64 (1983); *Berberena v. Echegoyen,* 128 D.P.R. 664, 879 (1991); *Rodriguez v. ELA,* 92 J.T.S. 63; *Defendini v. ELA,* 99 J.T.S. 119; *Disidente v. Departamento de Estado,* 98 J.T.S. 68.

Under this scrutiny, the courts grant great deference to the Legislature's discernment as to what is necessary and reasonable for the common good. See *United States Trust Co. of New York v. New Jersey, supra,* at p[p].

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[5] Art. II, Sec. 7 of the Constitution, in its relevant portion, reads: " . . . No one shall be deprived of his freedom or property without due process of law, nor shall anyone in Puerto Rico be denied equal protection under the law . . . " For its part, Art. II, Sec. 1, in its relevant portion, states that "no discrimination whatsoever may be established based on race, color, sex, birth, origin or social status, nor political or religious ideas."

1517-1518; *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 103 S.Ct. 697, 705 (1983).

13. The courts apply strict scrutiny in situations in which fundamental rights or suspect classifications are involved. Regarding this scrutiny, the Supreme Court has stated:

> "The second criterion, of more recent genesis and as a reaction to the dissatisfaction generated by the first one, establishes that when the classification affects the citizenry's fundamental rights and, is directed against a suspect classification, the same is subject to strict legal scrutiny. In this case, it is up to the State to demonstrate the existence of a pressing or compelling state interest which justifies the classification and that the same necessarily fosters the achievement of that interest. This criterion has been applied to certain laws which establish suspect distinctions, such as those based on race, nationality, citizenship, poverty or birth".

Zachry International v. Tribunal Superior, supra, at pp. 277-178. (Emphasis supplied.); *León Rosario v. Torres,* 109 D.P.R. 804, 813 (1989); *Com. de la Muger v. Srio. de Justicia,* 109 D.P.R. 715, 731 (1980); *Disidente v. Departamento de Estade, supra.*

14. Pursuant to the aforesaid case law standards, with the United States and the Puerto Rico Supreme Courts have reiterated that no criterion has been established that should invariably be used in the legal analysis of the requirements which should be demanded for the registration of new parties. *Williams v. Rhodes,* 89 S.Ct. 5 (1968); *Jennes v. Fortson,* 91 S.Ct. 1970 (1971); *Storer v. Brown,* 94 S.Ct. 1274, 1279 (1974). The process of analysis

has been one of studying the particular circumstances of each case, distinguishing them from one another, as to which requirements it considers reasonable. Strict scrutiny has been used " . . . solely in the face of a severe or unreasonable restriction . . . [Cites ommitted] . . . " *Sánchez Vilella v. ELA*, 93 J.T.S. 13c (Concurring Opinion by Chief Justice Andréu Garcia.

Thus, for example, in *Williams v. Rhodes, supra*, Ohio's Electoral Act of Ohio was declared unconstitutional, since it required registration petitions to be submitted in a number equal to fifteen percent of the total of ballots cast in previous elections for the office of Governor. Furthermore, the legislation did not allow independent candidates. In articulating the analysis which would have to be applied to this type of case, the United States Supreme Court stated that:

> " . . . In determining whether or not a state law violates the equal protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification."

Id., at p. 10.

After the aforesaid analysis, the Court concluded that, while it is true that the State has a legitimate interest in having the persons elected in an election represent the majority of voters and even acknowledging the State's broad power to regulate election processes, the challenged provisions of the Ohio law made it virtually impossible for parties other than the two majority parties to be included on the ballot. Because of this, it ruled that

these provisions created discrimination prohibited by the Equal Protection Clause. *Id.*, at p. 12.

15. Nevertheless, in *Jennes v. Fortson, supra,* the United States Supreme Court reached the opposite conclusion. The Court compared the legislation challenged in *Williams v. Rhodes, supra,* with Georgia's Electoral Act. The Georgia legislation defined "political party" as that organization whose candidate had received at least twenty percent of the vote in the prior elections. Any other political organization would be called a "political body". The legislation required that registration petitions of independent candidates and "political bodies" be signed by a number equal to five percent of those people who had been eligible in the prior elections to vote for the position for which the candidate was interested in running. Furthermore, the term in which to circulate the petitions was one hundred and eighty days. In addition, the electors had no restrictions at all as to write-in votes.

In comparing the requirements of Georgia's legislation with those of Ohio, challenged in *Williams v. Rhodes, supra,* the United States Supreme Court concluded:

> "Unlike Ohio, Georgia freely provides for write-in votes. Unlike Ohio, Georgia does not require every candidate to be the nominee of a political party, but fully recognizes independent candidacies. Unlike Ohio, Georgia does not fix an unreasonably early filing deadline for candidates not endorsed by established parties. Unlike Ohio, Georgia does not impose upon a small party or a new party the procrustean requirement of establishing elaborate primary election machinery. Finally, and in su, Georgia's election laws, unlike Ohio's do not operate to freeze the political status quo. In this setting, we

> cannot say that Georgia's 5th petition requirement violates the Constitution."

Jennes v. Fortson, supra, at p. 1974.

16. It is evident from the above discussion that, in light of the particular circumstances of each case, if the state's requirements for registration of parties are not excessively onerous, they shall be constitutionally validated by the courts. However, while they shall not always be invalidated, those requirements that are excessively onerous should be judicially analyzed under strict scrutiny. As the United States Supreme Court stated in *Sotrer v. Brown, supra*:

> " . . . substantial burdens on the right to vote or to associate for political purposes are constitutionally suspect and invalid under the First and Fourteenth Amendments and under the Equal protection Clause unless essential to serve a compelling state interest . . . [However, I]t has never been suggested that the *Williams-Kramer-Dunn* rule automatically invalidates every substantial restriction on the right to vote or associate . . . Moreover, as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process. In any event, the States have developed comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates".

Id., at p. 1279.

17. For its part, the Puerto Rico Supreme Court has stated that the fact that the Electoral Act establishes certain classifications " . . . does not imply in and of itself that the constitutional equal protection guarantee has been violated". *P.S.P., P.P.I., P.I.P. v. Romero Barcelo,* 114 D.R.R. 246 (1980). Observe that this case concerned a challenge to the requirement to fill out a form with a sworn statement in the case of electors who could not present their electoral I.D. card in the 1980 general elections. In this case, therefore, the requirement had a bearing on the right to vote.

The Supreme Court ruled that this requirement was not unreasonably onerous, nor from the face of it was it a suspect classification, in that the scrutiny that applied was the traditional one, that of rational connection. *Id.*, at p. 261. To that effect, it stated that: " . . . the pertinent criterion to examine the reasonableness of the classification at issue here, in our judgment, is the so-called traditional analysis. Its use in election cases, while not frequent given the importance of the high values involved, is solidly established . . . [Cites ommitted] . . . " *Id.*

18. Furthermore, the highest forum in our country has recognized both that the right to vote is a fundamental right and that the State has very broad powers to regulate election processes. *Ramirez de Ferrer v. Mari Bras,* 97 J.T.S. 134; *Sánchez Vilella* v. *E.L.A., supra; P.R.P. v. E.L.A.,* 115 D.P.P. 631, 636-637 (1984).

19. As is known, the equal protection clause does not prohibit all unequal treatment, but rather unjustified

unequal treatment. *Zachry International v. Tribunal Superior, supra,* at p. 277; *Williams v. Rhodes, supra,* at p. 10. The law must necessarily treat similarly situated persons unequally. *Calo v. Cartagena,* 91 J.T.S. 78.

20. In this context, both in federal and Puerto Rico cases which have challenged requirements for registering new parties or independent candidates, the United States Supreme Court and the Puerto Rico Supreme Court have ruled that independent candidates and organizations aspiring to become parties are not similarly situated in relation to established parties. We shall see.

In the first place, the Puerto Rico Supreme Court has pointed out the importance that political parties have in a democratic system. Hence, in the case of *P.I.P. v. C.E.E.,* 120 D.P.R. 580 (1988), the Court opined that:

> "It is also deemed that political parties have come to assume an ever broader and more important role in the daily functioning of modern States and that there is a correlation between the party system and constitutional laws . . . [Cites ommitted] . . . The citizen rarely participates as an isolated individual and does so instead as a member of complex social formations. From the sociological point of view, parties present themselves as spontaneous organizations characterized by a community of conceptions or political interests".

Id., at pp. 616-617.

21. Likewise, in *P.R.P. v. E.L.A., supra,* it stated that " . . . [i]n our democracy, political parties are indispensable for their functioning . . . They constitute the citizenry's collective vehicle of expression to peacefully

channel the various political tendencies and interests of the country's diverse sectors of opinion . . . " *Id.*, at p. 638. See, also, Justice Rigua's Concurring Opinion in *García Passalacqua v. Tribunal Electoral*, 105 D.P.R. 49, 74[6] (1976); *Sánchez Vilella v. E.L.A., supra*, and *P.R.P. v. E.L.A., supra*, at p. 640.[7]

22. In the second place, [in] cases in which statutes establishing classifications between established parties and those which have not been registered as such, both courts have recognized that it is not until the point at which the petitioning group has satisfied all the requirements demanded by electoral laws for its registration, that said party qualifies for treatment equal to that of traditional parties. *P.R.P. v. E.L.A., supra.*[8]

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[6] The electorate has popular sovereignty, makes it effective through political parties, and the latter, upon coming into power, form the government. The government shall always remember that the will of the people is the source of public power and that its power emanates therefrom. What elections do is to legitimize the exercise of that power. One can see why the function of political parties is considered fundamental in the modern democratic system".

[7] " . . . Political parties are movements that join together citizen interests. The backing necessary to register and confer official franchise on a party by petition, in and of itself is sufficient for that condition to take full effect. To deny that equality *ab initio* is to refuse to recognize that reality".

[8] In this case, there was a challenge to certain provisions of the Electoral Act that denied representation of a party by petition at the Permanent Registration Boards and participation in the Electoral Fund. In abrogating these provisions under the Equal Protection Clause, the Puerto Rico Supreme Court stated that: " . . . The classification based on major parties and parties by petition is unsustainable under any juridical analyses. It

On the other hand, in *Jennes v. Fortson, supra,* regarding the differences between established parties and those which aspire to be established, the highest federal forum stated:

> "The appellants' claim under the Equal Protection Clause of the Fourteenth Amendment fares no better . . . The fact is that there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other. Georgia has not been guilty of indivious [sic] discrimination in recognizing these differences and providing different routes to the printed ballot. **Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike . . .** "

Id., at p[p]. 1975, 1976.

23. Furthermore, case law has held that the State has an important and legitimate interest in having parties wishing to be registered demonstrate that they have significant support from the electorate. *Adorno Ouiles v. Hernandez, supra* and that those candidates who are elected represent a majority of the electorate. *American Party of Texas v. White,* 94 S.Ct. 1296, 1307 (1974); *Jennes v. Fortson, supra,* at p. 1976, thereby preventing the elector from

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unduly affects electors of that organization. The trial court correctly ruled that **'once a party has been recognized and granted electoral franchise,** an unequal treatment in matters of representation on the various organisms created in the Electoral Act or in matters of government financial assistance cannot be validly sustained' . . . " *Id.,* at p. 641. (Emphasis ours).

becoming confused when choosing among multiple candidates on the ballot. Finally, the State also has the interest and duty to see to the integrity of the electoral process and prevent fraudulent or frivolous candidacies. *Id.; Storer v. Brown, supra,* at p. 1280; *Lubin v. Panish,* 94 S.Ct. 1315, 1320 (1974).

24. From all the foregoing it can be drawn that the CAP cannot prevail in its contention. We shall see.

In the first place, as to the specific requirement of notarizing registration petitions of the new party, federal case law endorsed its validity in *American Party of Texas v. White,* 94 S.Ct. 1296 (1974). In this case, Texas electoral law required that the party's registration petitions be notarized. The United States Supreme Court ruled that the requirement to notarize the registration petitions was valid. *Id.,* at pp. 1309, 1311. The fact that each state regulates the notarial profession differently was not relevant to the ruling on the case before the Court.

We cannot agree with plaintiff's contention to the effect that the fact that Texas does not require notaries to be lawyers is grounds to conclude that the requirement to notarize petitions is only constitutionally valid when the law does not require public notaries to be lawyers. Neither the requirements of Texas for the practice of a notary nor those of any other state have been contested in the aforesaid cases.

25. In Puerto Rico, public notaries are the functionaries entrusted with guaranteeing the authenticity of the signatures made before them, through the notarized certification. Art. 2, Puerto Rico Notarial Act, 4 L.P.R.A. 2002.

26. In passing, it should be pointed out that on November 15, 1978, for the purpose of amending the Electoral Act, the Legislation enacted Act 4. Through amendment, there was added to Art. 3.001 of the Act the requirement that registration petitions for parties by petition be sworn to before a notary public. The Report of the Government Committee of the Puerto Rico Senate as to House Bill 896, stated that:

> "Inadvertently, when considering and enacting the current Electoral Act, the requirement that petitions to register parties by petition be sworn to was not included . . . The requirement of having registration petitions of parties by petition sworn to establishes a guarantee of the truthfulness of the elector's intention as expressed on the petition, and protects purity in the procedure of registering parties . . .
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> Our political history is full of example [sic] in relation to parties that either did not succeed in becoming registered, or that, having done so, did not maintain their status for very long, thus showing that they lacked solidity and importance, desirable qualities in a solid and stable democratic system such as that of Puerto Rico. By way of example, we can mention the Authentic and Proletariat Parties (1944), the Criollo Party (1952), the "The Voice of the People" Party (1960), the American Reform and Puerto Rican United Front Parties (1968), and the Authentic Pro-Sovereignty Party (1972) . . . "

Id., to pp. 3, 5.

For its part, the Report of the Government Committee of the House of Representatives summarized the State's interest in enacting this provision: "The request

for registration petitions of parties by petition to be sworn to, establishes a legally authorized authentication of the truthfulness of the elector's intention to create a new party that will represent the political interest of a sector of the People of Puerto Rico and guarantee the purity of the procedure". *Id.*, at p. 3.

Consequently, the requirement that public notaries be those who swear in the registration petitions certainly satisfies the State's important interest in preventing fraudulent and frivolous candidacies, that the signatures on the petitions be reliable and that political organizations demonstrate that they have the support of the electorate.[9] *American Party of Texas v. White, supra; Storer v. Brown, supra; Jennes v. Fortson, supra.*

27. Even though it is true that traditional parties can use Commission staff to administer oaths at registrations for primaries, this fact does not constitute discrimination based on political ideology, nor unequal treatment. The CAP is not equally situated with respect to the traditional parties, because of the fact that it has not been

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[9] To this effect, the comments of Associate Justice Martin, in his Concurring Opinion in the case of *Fuster v. Busó*, 102 D.P.R. 327 (1974), are interesting: " . . . The State has a right to demand the existence of a substantial backing of the electorate toward a political party in order to protect itself from frivolous or numerous candidacies. During the meetings of the Constitutional Assembly there were comments in the sense that democracy is weakened by the proliferation of parties and the artificial preservation of parties that lacked [sic] sufficient electoral strength, with the consequent fractionalization of political liability toward the public, since the multiplication of small political parties enfeebles them from expressing their opinions . . . [Cites omitted . . .]" *Id.*, at p. 353.

constituted as a party by petition, pursuant to the provisions of the Electoral Act. The requirements for fulfilling all legal requirements of candidacies and for the holding of primaries apply solely to already established parties, but not to political organizations. 16 L.P.R.A. 3156, 3159. Once the CAP is registered as a party, by following the same requirements that have been followed by other political groups that aspire to become a party by petition, it will be in an identical situation with the political parties and may use Commission staff to administer oaths with the petitions of its primaries.

28. Furthermore, all the organizations aspiring to become parties, not only those whose ideologies are analogous to those of the CAP, have to satisfy the same requirements for their registration as parties by petition. As we mentioned above, a substantially onerous requirement is not inexorably equal to an unconstitutionally onerous one.

29. Observe that the Electoral Act offers other alternatives in order to get onto the ballot, such as independent candidacy, 16 L.P.R.A. 3177, or the write-in vote, 16 L.P.R.A. 3210. The United States Supreme Court supported its decision, validating as reasonable certain requirements for registering a political organization as a party, in the fact that there are alternatives for expressing an ideology on the electoral ballot. *Jennes v. Fortson, supra.*[10] Therefore, it cannot be said that the Electoral Act,

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[10] "Anyone who wishes, and who is otherwise elegible [sic], may be an independent candidate for any office in Georgia. Any political organization, however new or however small, is free to endorse any otherwise elegible [sic] person as its

through its requirements, completely shuts the doors to expression of non-traditional ideologies.

30. Nor can the court ignore the important interest of the State in having only validly registered parties share in the Electoral Fund. 16 L.P.R.A. 3114, 3115. Certainly, it is essential to the State that available government resources be distributed among those organizations that actually have the electorate's support; to wit, political parties as defined in the Electoral Act. On this point, the Report of the Government Committee of the House of Representatives of October 24, 1978, regarding H.B. 896, *supra*, stated:

> "A factor of great importance which should be considered in enacting this Bill, is the provision of the current Electoral Act regarding the electoral Fund. Inasmuch as that fund is a part of the public treasury, we must safeguard that sharing therein not be surrendered to parties by petition which have been fraudulently registered and on the contrary, that it be shared with that party that has the endorsement of a

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candidate for whatever elective public office it chooses. So far as the Georgia election laws are concerned independent candidates and members of small or newly formed political organizations are wholly free to associate; to proselytize, to speak, to write, and to organize campaigns for any school of thought they wish. They may confine themselves to an appeal for write-in votes. Or they may seek, over a six-months' period, the signatures of 5% of the elegible [sic] electorate for the office in question . . . in a word, Georgia in no way freezes the status quo, but implicitly recognizes the potential fluidity of American political life . . . "

genuinely interested sector and which was lawfully registered as a new party."

Id., at p. 3.

31. Finally, the State also has an important interest in avoiding the accumulation of multiple registration petitions at the Commission, close to the deadline for parties to register. The State has to work with its limited resources so that, gradually, such petitions as have properly fulfilled all legal requirements may be examined. For that reason, we cannot conclude that the seven-day term established by the Electoral Act for fulfilling legal requirements of registration petitions is unreasonable or excessively onerous.

Therefore, the Court denies the motion for summary judgment filed by plaintiff. On the contrary, it enters judgment summarily dismissing, in all its parts, the complaint in the above-captioned case.

TO BE RECORDED AND NOTICE SENT.

Given in San Juan, Puerto Rico, this 21st day of January, 1999.

[signed]
CARMEN RITA VELEZ BORRAS
SUPERIOR COURT JUDGE

I certify: Carmen López
Chief Clerk

By: *[sgd.] S Carrasquillo*

United States District Court
For the District of Puerto Rico

- CERTIFIED -

To be a correct translation prepared by:

/s/ Illegible

Certified Court Interpreter
Administrative Office of the
United States Courts